92-447

Supreme Court, U.S.
FILED
JUL 27 1992
OFFICE OF THE CLERK

CASE NO.:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

REVEREND OTIS WILLIS, JR.
Petitioner

v.

SHERWIN WILLIAMS CO.
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Reverend Otis Willis Jr.
Pro. S.E. Litigant, Petitioner
4470 Springvalley Parkway
College Park, GA. 30349
(404) 766-4348

FEDERAL QUESTIONS PRESENTED FOR REVIEW

1. Whether plaintiff sustain injuries on the job while employed at Sherwin Williams Co. after nineteen years of service. Turn in doctor's statement to remain from work respondent discharged plaintiff for unacceptable excuse which violated respondent's policies as well as union contract.

2. Whether plaintiff civil rights has been violated from January 31, 1986 at the inception until this present time the constitutional law applied correct since filing January 24, 1989.

3. Whether plaintiff, summary judgement should have been denied, which plaintiff was seeking a default against defendants, JoAnn Hanson, and Sherwin Williams Co. [Entry, March 27, 1990]

4. Whether the District Court error in acceptance of the Magistrate judge the Special Master, without the

written consent of the parties. [Entry, December 14, 1990]

5. Whether the settlement and release agreement that is illegal and unlawful should be null and void or constitutional law, in view of it unlawful traits.

6. Whether its a violation of federal law for defendants to incorporate the Federal Government in illegal and unlawful activities by deducting Social Securities, Federal and State Income Tax from plaintiff as though as an employee when plaintiff was not.

7. Whether defendant JoAnn Hanson, should have been left off the judgment by the District Court, ruling. [Entry, December 14, 1990]

8. Whether plaintiff prevail because of the original complaint filed January 24, 1989, and what was prayed for in the complaint.

LIST OF ALL PARTIES

I certify that the following comprise all interested persons known to

Petitioner:

Reverend Otis Willis, Jr., Petitioner
Attorney: Pro Se
College Park, GA

Sherwin Williams Company,
JoAnn Hanson
Respondent
Attorney: Jack N. Sibley
Freeman & Hawkins
Atlanta, Georgia

Reverend Otis Willis Jr.
Reverend Otis Willis, Jr.
Attorney For Petitioner
Pro Se Litigant

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PETITION FOR WRIT OF CERTIORARI

Appellant

RE: 91-8046 Willis - VS - Sherwin Williams Co.

DC DKT NO.

The settlement and general release agreement between Willis and Sherwin Williams Company. Is unenforceable.

AGREEMENT

No. 4, As further consideration to Willis, the company agrees to change Willis personnel records to reflect termination due to a closing of the facility instead of discharge. Fraud - Willis, nor Sherwin Williams Company can perform this except by violation of law, that render contract unenforceable.

Agreements, in violation of law have never been regarded as valid under common law individuals cannot stipulate for something illegal. 45. Scheeline VS. Pezzcla, 29 Cal App 266, 155 p 127, Sapp VS. David 176 GA. 265,

168 SE 62, 85 Alr 1361; Mason VS. McGugin, 118 Kan 663 236P 845; Hennessy VS. Automobile Owners Ins. Assn (Tex Com App) 282 SW 791, 46 Alr 521.

The law which prohibits will not lend its aid in promoting the means designed to carry it into effect. It will not promote in one form that which it declares wrong in another, and hence contracts which bring about results which the law seeks to prevent are unenforceable. 47. Weber VS. Sternad (Cuyahoga Co) 69 Ohio App 258, 24 Ohio Ops 51, 35 Ohio L Abs 197, 39 NE2d 623 Affd 140 Ohio ST 253, 23 Ohio Ops 459, 43 NE2d 227 agreement.

FRAUD INDUCED

No. 5. Nothing in this agreement shall be interpreted as an admission by the company of a violation of any laws whatsoever or that it has treated Willis wrongfully. In fact, the company expressly denies any violation of any of its policies, procedures, labor contracts, or any local, State or

Federal laws or regulations or common-law principles whatsoever.

This paragraph show the illegality in paragraph #4 and #5, also #1, the company agree to pay Willis, the gross sum of $3,654.00 (minus required deductions) as full settlement of the claims described in paragraph #2.

Federal, Inc. Tax withheld $438.48, Social Security Tax withheld $274.42 and State Income Tax withheld $146.16 which is not lawful since I was not an employee and this was not wages. § 245.00 illegality in performance as affecting validity of contract.

PETITION

NOT CONSIDERATION

Plaintiff never received all back pay due him; a promise to do, or the performance of, what one is already under a legal obligation to do is not consideration. There was no valuable given and hence the contract or agreement is not binding or enforceable it is not a settlement or a lawful contract in anyway. (invalid)

INCORPORATION

The defendants incorporated the United States Federal Government in illegal and unlawful activities.

Defendants fail to file their answer on time plaintiff, Willis, filed a default summary judgement against Sherwin Williams Co. and Ms. JoAnn Hanson, and was denied.

Ms. Hanson as a defendant in this case was left off or deleted from the judgment which is a court error (erroneous). The court also error in decision December 12,

1990 J.Owen Forrester, United States District Judge allowing Magistrate Dougherty to be special master without the written consent of the parties.

An agreement which cannot be performed without a violation of the law is illegal and void, whether or not the parties knew the law. Yankton Sioux Tribe VS. United States, 272 US 351, 71 L Ed 294, 475 Ct 142; Keith Furnace Co. VS Mac Vicar, 225 Iowa 246, 280 NW 496.

A contract to do a thing which cannot be done without a violation of the law is void. Lewis VS Davis, 145 Tex 468, 199 SW 2d 146. Miller VS Thompson, 40 Nev 35, 160 P 775, Texas Employers Ins. Assn VS Tabor (Tex Com App) 283 SW 779.

Brief in Support of Defendants Motion
For Summary Judgment is dated April 18, 1990.

In my opinion, to influence the outcome of District Court decision, on page 10. paragraph (B) of the Brief, and also the conclusion on page 11.

B. If defendant's Motion for Summary Judgment is granted, this action cannot be refiled because The statute of limitations for bringing an age discrimination in employment act violation has expired. Please read page 10 and 11 of the brief in reference.

For the foregoing reasons the previous judgment should be over turn, and the plaintiff award everything that demand in the original complaint filed January 24, 1989 in the United States District Court for the Northern District of Georgia.

Pro Se, Rev. Otis Willis, Jr.
4470 Springvalley Parkway
College Park, Georgia 30349
(404) 766-4348

Special Footnote: Complaint filed [January 24, 1989],
Judgement entry date
[December 14, 1990]
Notice of Appeal from Judgment
entry date [January 14, 1991]

Filed Appeal [February 19, 1991]
Judgment Affirmed
[February 27, 1992]
Petition for Rehearing Filed
[March 16, 1992]
Petition for Rehearing filed by Appellant, Denied [May 1, 1992]

OFFICIAL COURT OPINIONS

The United States District Court for the Northern District of Georgia Atlanta Division issued its memorandum opinion and order signed December 12, 1990.

Under the Fed. R. Civ. p. 53 (e)(2), when a matter is referred to a special master in a non-jury action, the district court "shall accept the master's findings of fact unless clearly erroneous.

Defendant's motion for summary judgment was granted.

The United States Court of Appeals for the Eleventh Circuit affirmed the decision on February 27, 1992, (per curiam:)

The United States Court of Appeals for the Eleventh Circuit denied a rehearing May 1, 1992 (signed).

Filed on time to the Supreme Court of the United States, a Petition for Writ of Certiorari was granted an extension dated July 30, 1992 (signed).

STATEMENT OF JURISDICTION

This Petition For a Writ of Certiorari is sought from a final order of the United States Court of Appeals, Eleventh Circuit, issued May 1, 1992 and is herein filed within the required ninety (90) day period.

This court has jurisdiction pursuant to 28 U.S.C. Section 1254.

STATEMENT OF THE CASE

This is an Appeal from a Final Order signed by the Eleventh Circuit Court of Appeals on May 1, 1992.

FACTS OF THE CASE

Petitioner, Reverend Otis Willis, Jr. sustained on the job back injuries in January 1986, with nineteen years of service, while still under the doctor's care and restriction from work. November 8, 1986 my wife accepted a certified letter from Sherwin Williams Co. terminating my employment as of November 5, 1986. (a violation of union contract), with Teamsters Local #528, company's collective bargaining agreement. Union contract page 23 paragraph 26d.

Petitioner turned in one doctor's statement to JoAnn Hanson on the 23 October 1986 one doctor's statement on 28 October 1986 and a copy to Warehouse Superintendent on 28 October 1986 and the statements were accepted and I was

given well wishes by both persons. Contract violation - wrongful termination.

Respondent, interfered with doctors and medical treatments, tampered with my pay and employment records, harassed and created undue pressure. Gave out false misleading information to E.E.O.C. and many other persons. After I was terminated the respondent in 1987 authorized three weeks stay in a hospital for me and when the bills were sent to Sherwin Williams Co. Insurance the private insurance was told not to pay the bills the same as many other medical and treatment bills.

I did receive the right to sue, from the office of E.E.O.C. in Washington, D.C.

NOT CONSIDERATION

Plaintiff never received all back pay due him; a promise to do, or the performance of, what one is already under a legal obligation to do is not consideration. There

was no valuable given and hence the contract or agreement is not binding or enforceable it is not a settlement or a lawful contract in anyway. (invalid)

INCORPORATION

The defendants incorporated the United States Federal Government in illegal and unlawful activities.

Defendants fail to file their answer on time plaintiff, Willis, filed a default summary judgement against Sherwin Williams Co. and Ms. JoAnn Hanson, and was denied.

Ms. Hanson as a defendant in this case was left off or deleted from the judgment which is a court error (erroneous). The court also error in decision December 12, 1990 J. Owen Forrester, United States District Judge allowing Magistrate Dougherty to be special master without the written consent of the parties.

ARGUMENT

Petitioner respectfully requests that this court grant a Writ of Certiorari in this case. Plaintiff never received all back pay due him; a promise to do, or the performance of, what one is already under a legal obligation to do is not consideration. There was no valuable given and hence the contract or agreement is not binding or enforceable it is not a settlement or a lawful contract in anyway. (invalid)

INCORPORATION

The defendants incorporated the United States Federal Government in illegal and unlawful activities.

Defendants fail to file their answer on time plaintiff, Willis, filed a default summary judgement against Sherwin Williams Co. and Ms. JoAnn Hanson, and was denied.

Ms. Hanson as a defendant in this case was left off or deleted from the judgment which is a court error (erroneous). The court also error in decision December 12,

1990 J. Owen Forrester, United States District Judge allowing Magistrate Dougherty to be special master without the written consent of the parties.

CONCLUSION

Petitioner have shown the Court that the Agreement is invalid. Ms. JoAnn Hanson was left off the judgment as a defendant, plain error by the District Court.

Petitioner also shown the court that a special master can not be appointed without the written consent of the parties.

For the above mentioned, the contents of the petition, for the Facts of the Case. Judgment should be over turned and the plaintiff awarded everything demanded in the original complaint filed January 24, 1989 in the United States District Court for the Northern District of Georgia.

Respectfully Submitted,

Reverend Otis Willis Jr.
Reverend Otis Willis, Jr.
Pro. S.E. Litigant, Petitioner
4470 Springvalley Parkway
College Park, GA 30349
(404) 766-4348

APPENDIX

Exhibit 1	U.S. District Court Order Signed 12/12/90
Exhibit 2	U.S. Court of Appeals, Eleventh Circuit, Order Per Curiam: 2/27/92
Exhibit 3	U.S. Court of Appeal, Eleventh Circuit, Order Signed 5/1/92
Exhibit 4	Supreme Court Of U.S. Supreme Court Clerk Office Signed 7/30/92

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

OTIS WILLIS, JR., REV.,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	CIVIL ACTION NO.
	:	1:89-CV-0153-JOF
SHERWIN WILLIAMS	:	
COMPANY,	:	
	:	
Defendant.	:	

ORDER

This matter is before the court on plaintiff's objections to the report filed by Magistrate Dougherty, acting as special master, in this Title VII action pursuant to Internal Operating Procedure Rule 920-2(a). Magistrate Dougherty's report recommends that defendant's motion for summary judgment be granted on grounds of accord and satisfaction. The magistrate concluded that a settlement agreement executed by the parties was a voluntary and

knowing waiver of plaintiff's right to sue on the claim that is the subject of the instant action.

Plaintiff has asserted no specific grounds for his objection other than his opinion that the magistrate overlooked or ignored the evidence he submitted. Plaintiff states that a reading of the settlement and release agreement by the district court will show that he should prevail on his entire complaint. The court has reviewed the settlement agreement and the record and finds that they support the magistrate's report in its entirety.

Under Fed. R. Civ. P. 53(e)(2), when a matter is referred to a special master in a non-jury action, the district court "shall accept the master's findings of fact unless clearly erroneous." When a magistrate acts as a special master, the magistrate's findings of fact "must be accepted by the district court unless clearly erroneous." Martin v. University of South Alabama, 911

F.1 2d 604, 608 (11th Cir. 1990). No plain error having been shown, the court receives with approval and ADOPTS the magistrate's report and recommendation as the opinion and order of the court.

SO ORDERED THIS 12th day of December, 1990.

/s/
J. OWEN FORRESTER
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 91-8046
Non-Argument Calendar

D.C. Docket No. 1:89-CV-153-JOF

REV. OTIS WILLIS, JR., : Plaintiff-Appellant,

v. :

SHERWIN WILLIAMS COMPANY, : Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(February 27, 1992)

Before EDMONDSON and COX, Circuit Judges, and JOHNSON, senior Judge.

PER CURIAM:

The record in this case reflects that the district court correctly determined that Appellant Willis is bound by his

agreement and his execution of a release in which he waived all claims, including those under the Age Discrimination in Employment Act and Title VII, for the substantial consideration he received from Sherwin-Williams.

The judgment of the district court granting summary judgment to Sherwin-Williams is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 91-8046

REV. OTIS WILLIS, JR.,	:	
	:	Plaintiff-Appellant,
v.	:	
	:	
SHERWIN WILLIAMS COMPANY,	:	
	:	Defendant-Appellee.
	:	

Appeal From The United States Districts Court For The Northern District of Georgia

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ON PETITION(S) FOR REHEARING

(May 1, 1992)

BEFORE: EDMONDSON and COX, Circuit Judges, and JOHNSON, Senior Circuit Judge.

PER CURIAM:

The petition(s) for rehearing filed by Appellant, Rev. Otis Willis, Jr., is denied.

ENTERED FOR THE COURT:

/s/
United States Circuit Judge

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
56 FORSYTH STREET, N.W.
ATLANTA, GEORGIA 30303

Miguel J. Cortez
Clerk

In Replying Give Number
Of Case and Names of Parties

May 1, 1992

MEMORANDUM TO COUNSEL OR PARTIES:

RE: 91-8046 Willis v. Sherwin Williams Company

DC DKT No.: 89-00153 1CV-JOF

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

/s/
MIGUEL J. CORTEZ, Clerk

Reply To: Pam Holloway
(404) 331-3836

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

William K. Suter,
Clerk of the Court

Area Code 202
479-3011

July 30, 1992

Rev. Otis Willis, Jr.
4470 Springvalley Parkway
College Park, GA 30349

RE: Otis Willis, Jr. v. Sherwin Williams Co.

Dear Mr. Willis:

Your purported petition for a writ of certiorari typed on letter sized paper was received July 27, 1992 and must be returned together with your money order in the amount of $300.00.

If you intend to pay the docket fee, the petition must be presented on paper which is 6 1/8 by 9 1/4 inches as required by Rule 33. The cover of the petition must bear only that information required by Rule 33. The opinion of

the District Court must be included in the appendix as required by Rule 14.

Kindly redo the petition so that it complies with the Rules of the Court and return it to this office promptly. See Rule 33.7 of the enclosed Rules of the Court.

Very truly yours,

William K. Sutter, Clerk

By

/s/
Francis J. Lorson
Chief Deputy Clerk